Alyeska Pipeline Service Company and International Brotherhood of Electrical Workers, Local 1547, AFL-CIO, Petitioner. Case 19-RC-9016

April 12, 1982

# DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

# By Chairman Van de Water and Members Jenkins and Hunter

Pursuant to a Decision and Direction of Election, an election was conducted in this case on January 19 and 23, 1979. The Employer filed timely objections to the election; the Regional Director issued a supplemental decision overruling the objections and certifying the Petitioner as the exclusive representative of the bargaining unit employees; and the Employer requested review of the Regional Director's supplemental decision. On August 21, 1979, the Board granted the request for review with respect to Objection 1, and remanded the case for a hearing on that objection. The Board denied the request for review in all other respects.

Following a hearing on October 23 and 24, 1979, the Hearing Officer issued a report and recommendations, dated November 29, 1979. The Employer filed exceptions to the report and a brief in support of its exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the Hearing Officer's report, the Employer's exceptions thereto, and the entire record in this case, and makes the following findings:

- 1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- 2. The Petitioner is a labor organization which claims to represent certain employees of the Employer.
- 3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 4. The following employees, as stipulated by the parties, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by Alyeska Pipeline Service Company classified as technicians in the electrical and instrument sections of the

<sup>1</sup> The tally of ballots showed 22 ballots cast for, and 5 against, the Petitioner; there was 1 challenged ballot.

Employer's maintenance group at its Trans-Alaska terminal in Valdez, Alaska; excluding all other technicians, office clerical employees, guards and supervisors as defined in the Act.

5. The Board has considered the Hearing Officer's report, the Employer's exceptions and brief, the Petitioner's answer, and the entire record in this case and hereby adopts the Hearing Officer's findings and recommendations only to the extent consistent herewith.

The Employer's exceptions contend that the election should be set aside because, contrary to the Hearing Officer's finding, certain oral remarks made by the Petitioner at meetings with eligible voters, and statements in a letter dated January 16, 1979, from the Petitioner to said voters, were to the effect that membership in its organization would benefit them because members would have an advantage over nonmembers in getting jobs through the IBEW hiring halls. The Employer further contends that the Petitioner intentionally created and fostered the impression among the voters that membership would provide them with preferential access to high-paying construction jobs in Alaska and that such membership would normally be available only if the Petitioner won the election; that the oral statement by the Petitioner, that those possessing "a Local 1547 membership card would be in an extremely favorable priority position" compared to nonmembers, violates the Act; that the remarks of the Petitioner are coercive even if they do not constitute "promises of benefit"; that in view of the exclusive nature of the Petitioner's referral procedures, its statements that members would receive an "extremely favorable priority position" and a "definite advantage" over nonmembers with respect to obtaining high-paying jobs restrained and coerced the voters; that the statements are objectionable on misrepresentation grounds and are coercive; that the Employer's letter of January 11, 1979, to the effect that it would be unlawful to give voters a hiring hall advantage in the event of certification did not dissipate the effect of the Petitioner's oral misrepresentations; and that the Hearing Officer wrongfully characterized as permissible "puffing" the Petitioner's letter of January 16, 1979, that stated that there was a definite advantage as an IBEW member in securing a job if unemployed. We find merit in the Employer's exceptions.

The record shows that the union organizational campaign commenced approximately 1 year before the election on January 19 and 23, 1979. During the course of the campaign, the Union held approximately 10 meetings with bargaining unit mem-

bers. Some of these meetings were held after the filing of the Union's petition. Unit employees were told by the Petitioner on at least one occasion at these meetings that most large construction jobs in Alaska are "union" jobs; that there were two large jobs coming up in the near future; that 90 percent of the Petitioner's members were working; that those fortunate enough to possess a Local 1547 membership card would be in an extremely favorable priority position compared with those lacking a card; that not everyone who seeks to become a member of Local 1547 is permitted to do so; and that the unit members were presented a "golden opportunity" to achieve this secure but limited status by voting for representation by the Petitioner.

On January 11, 1979, the Emloyer sent a letter concerning the union organizational campaign to all unit members. In part, the letter contained the following language:

## Question:

If the IBEW is certified, would we obtain any advantage with respect to getting other jobs through the IBEW hiring hall?

#### Answer:

Although we hope that you are planning to stay with Alveska and are not thinking about other employment, the answer to this question is "no." Under the law and under the IBEW agreements, dispatch preference cannot be based on union membership. For example, Section 6.3 of the IBEW-NECA agreement states that the "selection of applicants by the union for referral to jobs-shall not be based on, or in any way affected by union membership-" For the top preference groups—groups 1(A), 1(B), and 1(C), time served under a separate Alyeska-IBEW contract for this bargaining unit would not count for dispatch priority but only time served under the IBEW-NECA agreement. The next priority group, group 1(D), gives priority to individuals who have been employed in "M & O work in Alaska" but does not require that this work be under an IBEW agreement. If you performed your present job under a separate Alyeska-IBEW contract, you would have no greater dispatch priority than if you continue your present job in a non-union status.

Thereafter, on January 16, 1979, George Roberts, assistant business manager for Local 1547, sent a letter to all employees in the bargaining unit. Pertinent parts of the letter contained the following language:

I would like to answer "responsibly" questions that Alyeska raised and attempted to answer in an uninformed way.

In the following pages, I will respond to Alyeska's letter of January 11, 1979 focusing on their questions and answering them.

# Question:

If the IBEW is certified, would we obtain any advantage with respect to getting other jobs through the IBEW hiring hall?

### Answer:

There is a definite advantage as a member of the IBEW in respect to securing a job if unemployed.

# 6.7 Inside Agreement:

"The Union shall establish and maintain an individual record card of every journeyman or journeyman technician, giving essential background data, training and experience as well as group classification as herein established. When a man is available for work, his record card shall be placed in the out-ofwork file in chronological order and according to classification. An applicant for work who is unemployed shall report his availability to the dispatcher's office in the Labor Market Area in which he resides. Said applicant shall notify the dispatching office of his point of contact and be available for referral or forfeit his position in the out-of-work file and be placed at the bottom of his group classification. Residents of areas outside the Anchorage, Fairbanks, Juneau or Ketchikan area shall be dispatched to jobs or shop in their residential area whenever possible."

Section 6.8 of the Inside Agreement is the book system itself. Where the member has the advantage is that he or she has been classified, that is, hours worked under a covered agreement, etc. An example: a maintenance person would be referred out to a maintenance job before a journeyman wireman would or any other classification. Another situation which has happened is that the Local has exhausted it's book on construction (oil-pipeline), then we would call maintenance people that might be available.

The Hearing Officer found that the employees were aware of the operation of the hiring hall by Local 1547 as a result of some of the meetings and the employer and union letters; that the hiring hall was exclusive; and that although the Employer did not have actual knowledge of the misstatements

made at union meetings until after the election, it nevertheless issued its January 11 letter which directly answered and confronted the assertions of the union representative and constituted an adequate response to the Union's verbal misrepresentations.

The Hearing Officer also found that the "definite advantage" language referred to in the Union's letter was limited only to the fact that union members are already preclassified into the appropriate priority group, and nothing more. He further found that this purported "advantage" was illusory or grossly inflated and that this constituted permissible "puffing" rather than "misrepresentation."

The Hearing Officer concluded that the Union made material misrepresentations to the employees during the organizing campaign; that the Employer, albeit unknowingly, answered these misrepresentations; and that the Union letter did not resurrect them. Moreover, he noted that the statements made by the union representative concerning the benefits flowing from union membership should be analyzed as misrepresentations, rather than promises of benefits, because the Union was telling the employees of an alleged existing benefit which allegedly inured from union membership, rather than promising the granting of a new benefit which might flow to them alone, should they become members. Stated, another way, if they became members, they would acquire what all other union members allegedly already had, not something which no one else received and which would require an affirmative act by the Union. We disagree.

Unlike the Hearing Officer, we find that the Petitioner's statements at the meetings and in its letter interfered with the employees' freedom of choice in the election. We further find that these statements are objectionable because they unlawfully promise to represent union members differently from nonmembers.<sup>2</sup>

The Hearing Officer mistakenly considered the statements only from the standpoint of misrepresentation. However, we view them to be more akin to

an employer's promise to grant benefits if the Union loses, or an Employer's threat of plant closure if the Union wins. In each of these situations the party making the coercive statement has the power to effectuate the promise or the threat, as the case may be, and suggests "a fist inside the velvet glove."3 Here, the Petitioner controls all access to construction jobs in Alaska for these employees and thus possesses a power comparable to an Employer's power to close a plant. In its campaign literature the Petitioner quoted from its collective-bargaining agreement the manner in which the referral advantage for union members is effectuated and thus imparted an aura of legitimacy to its unlawful promise.<sup>5</sup> We view such a promise under these circumstances as more coercive than the promise to waive initiation fees which the Supreme Court in Savair found unlawful. As the Petitioner is charged with a heavy responsibility to operate its hiring hall in a nondiscriminatory manner, yet has clearly promised to give members an unlawful advantage, we find that the Petitioner has interfered with the employees' right to express their wishes in the election free of coercion. 6 Accordingly, we shall set the election aside and direct a second election.

## **ORDER**

It is hereby ordered that the election previously conducted herein on January 19 and 23, 1979, be, and it hereby is, set aside.

[Direction of Second Election and Excelsior footnote omitted from publication.]

<sup>&</sup>lt;sup>2</sup> N.L.R.B. v. Savair Manufacturing Company, 414 U.S. 270 (1973); Crestwood of Stockton d/b/a Crestwood Manor, 234 NLRB 1097 (1978).

<sup>&</sup>lt;sup>3</sup> N.L.R.B. v. Exchange Parts Company, 375 U.S. 405, 409 (1964).

<sup>&</sup>lt;sup>4</sup> Thus, the promises here are not similar to those nonviolative union statements that employees understand cannot be automatically delivered but must be achieved through collective bargaining.

<sup>&</sup>lt;sup>5</sup> The requirement to clarify any ambiguity in its campaign literature rests with the Petitioner, not the Employer. *Inland Shoe Manufacturing Co., Inc.*, 211 NLRB 724 (1974).

<sup>&</sup>lt;sup>6</sup> Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Los Angeles-Seattle Motor Express] v. N.L.R.B., 365 U.S. 667, 674-675 (1961); The Radio Officers' Union of the Commercial Telegraphers Union, AFL [A. H. Bull Steamship Company] v. N.L.R.B., 347 [S. 17, 40-41 (1954).